1890-028 Chancery Causes: Peter T. Miller vs. William Miller & Lee Co.

Robinson, Thompson, Kincaid, Harris, Jones, Ewing, Mave, Whitehead, Milbourne, Morgan

1 Plat

CA-Estate Dispute
T-Property

To the Hon. H. S. K. Morrison Judge of the Circuit Court of Lee County Virginia:

Humbly complaining your Orator Peter T. Miller a citizen of said county of Lee would respectfully represent that his brother David Miller departed this life intestate, on or about the 14th day of December 1886, and at the time of his death he was the owner in fee of a certain tract of land supposed to contain about 580 acres lying about 7 miles west or north west from Jonesville, and the same lies on the North side of the Poor Valley Ridge, in the Poor Valley, and on the South side of Cumberand Mountain, 400 acres of which was conveyed to said David Miller by E. M. Davis, and 180 acres thereof, by one Eli Hubbard jr, and these two parcels of land, at one time, constituted part of a much larger tract, known as the old Eli Hubbard farm;

Said David Miller at his death, owned some other real estate but it is not necessary now to refer to it:

The said David Miller was an unmarried man, lived the life of a Bachelor, had no lineal issue, left no father or mother, and hence his brothers and sisters and their descendants are his legal heirs at law.

Your Orator states that the brothers and sisters of the said David Miller dec'd are as follows to wit. Your Orator Peter T. Miller Samuel Miller, John Miller, William Miller, Ellen, now the wife of James A. Robinson and Sarah E. now the wife of John B. Thompson. Your Orator further states that the said David Miller had another sister whose name was Mary Miller who during her life was twice married she first intermarried with one Robert S. Ewing by whom she had five children to wit Charles H. Ewing, John Ewing Lettitia who married James Nave Ellen, now the wife of A. S. Whitehead and Bathsheba now the Wife of William Milbourne. The said Charles H Ewing and the said Lettitia Nave not having been heard from during the last

10 or 15 years, it is believed and your Orator charges that they are now dead, After the birth of these 5 children, the said R S Ewing died and afterward his widow the said Mary Ewing intermarried with one James E. Harris by whom she had two children Tourit Orie and Emma Harris both of whom are infants under 21 years of age. And after the birth of said two children the said Mary Harris died so that her heirs at law are, John[1] Ewing, Ellen[2] Whitehead, Bathsheba[3] Melbourne, Orey[4] Harris and Emma[5] Harris now the wife of Fincas Jans.

Your Orator states that said tract of land at the death of said David Miller descended to his said brothers and sisters and to the 5 children of Mary Harris last above named.

Your Orator further states that since the death of said David Miller he has purchased the undivided interests of the said John and Samuel Miller in said tract of land, and they have conveyed said two interests to him

Your Orator further states that since said purchases was made by him. He has sold and conveyed to one B F. Kincaid one of said shares, and that said Kincaid has likewise purchased of John Ewing, A S. Whitehead wife and Wm. Melbourne and wife undivided interests in said tract of land, so that as the title to said land now stands, your Orator owns two undivided Sevenths thereof, the said Wm. Miller one Seventh thereof, Ellen Robinson wife of Jas A Robinson one Seventh thereof, Sarah Thompson wife of John B. Thompson one Seventh thereof. The said B F. Kincaid owns one Seventh, and three fifths of one seventh, the said Orey Harris one fifth of one seventh, and the said Emma Harris now Emma Jans one fifth of one seventh part thereof.

Your Orator further states that one A B McNeil is the guardian for said Orey and Emma Harris in this county, and as such, has contracted and sold, subject to the approval and ratification of the Circuit of Lee County the said Orey & Emma

Harris undivided interest in said tract of land to the said B.F. Kincaid and a suit has been instituted by the said Mr. Neil as such guardian against his said wards & others in your Honors court to ratify and approve said sale, and should said sale be approved and confirmed the said Kincaid will then own two sixths of said tract of land.

Your Orator states that said William Miller John B. Thompson and Sarah Thompson his wife and Orey Harris and Emma Harris are now residents of the state of Virginia, and the said Orey & Emma Harris are infants under 21 years of age

Your Orator is advised that under the facts of this case he is entitled in a court of equity to have said tract of land partitioned and divided between himself and the other persons herein named according to their rights as herein set out, and to attain that end is the object of this bill. The premises considered your Orator prays that the said William Miller, James A. Robinson, Ellen Robinson, John B. Thompson, Sarah E. Thompson, B.F. Kincaid Orey Harris and Finias Jarvis & Emma Jarvis be made defendants to this bill and be required to answer the same fully on Oath. that an order of publication be entered posted and published against William Miller, John B Thompson Sarah E. Thompson, Orey Harris and Emma Harris, that a guardian ad litem be appointed for the last two who are infants to defend their interest in this cause, and upon a hearing of the cause a decree be rendered, ordering a partition of said land among the parties according to their rights and interests, and if in any wise mistaken in this his special prayer then your orator prays for all general relief May the commonwealths writ of sfa issue directed &c

Henry J. Morgan for Pltff

* Your orator states that the said Emma Harris has lately intermarried with one Finias Jarvis.

C. 15.13 Paid
S 2.00
Pr. 5.00 Paid
A 15.00 paid
G.A.L. 5.00 Paid
Comrs 50.85
Co. C. 2.60 Paid

$95.28

13.61 1/7 Robinson
27.22 2/7 Peter Miller
13.61 1/7 Thompson
13.61 1/7 Wm Miller
27.22 2/7 Thomas & Jones

$95.28

Peter J. Miller

vs. } Bill for Partition

William Miller & others.

1890 1st March Rules Bill filed 2pa executed on resident defts & D. Nisi as to them order Pub. & cont'd

" 2d Mr. Rules D. N. confd Ans G.A.L. filed order pub completed & cause set for hearing by Deft

" Mr. Deere for partition and continued

" Sept. Decree final

To the Hon. H.S.K. Morison Judge of the Circuit Court of Lee County Virginia;

The answer of Orey Harris and Emma Jones, two infant defendents to a bill filed against them and others by Peter T. Miller, by John M Morgan their Guardian ad litem.

Respondent says his said wards are young and of tender years and being such, are the peculiar wards of courts of equity, their interest in this cause is therefore committed to your Honors care and keeping.

Respondent further says that his said wards have not informed him of any fact or circumstance, proper to state, or allege, in delay of the plaintiffs right to have the tract of land in the plaintiffs bill mentioned partitioned; as prayed for by the plaintiff, Nor does respondent of his own knowledge know of any fact, nor has others informed him of any fact which he ought to set up or state in delay of such partition, but on the contrary it seems right and proper to respondent that said land should be divided

Respondent having now answered as fully as deemed material he prays that his said ward be hence dismissed with their costs;

J. M. Morgan
Guard ad litem

Orey Harris & Emma Jones

vs } Ans – By Guard. Ad Litem

Peter T. Miller

Filed 2d Mr. Rules 1890
J. A. L. Hyatt C

Peter T. Miller Pltff } In Eqy
vs.
William Miller & others Defts }

This cause came in this day to be again finally heard on the papers heretofore read therein, and the report and plat of L. M. Carmichael H. E. Eddes and A. J. Myers the commissioners heretofore appointed such in this cause to partition the tract of land in the bill mentioned among the parties thereto according to their rights and interests, filed in the cause Aug the 16 1890. and was argued by counsel and the said Report of partition being unexcepted to, and the same being seen and inspected by the court. On consideration whereof It is adjudged ordered and decreed that said report of partition, and the platt which accompanies the same, be and the same are hereby confirmed. And pursuant thereto it is further adjudged ordered and decreed. that the Pltff Peter T. Miller take and hold free from the claim of the other parties lot No. 1 according to the metes and bounds as set out in said report and platt, That Wm Miller so take and hold lot No. 2. that B. F. Kincaid Orey Harris and Emma Jones wife of Finnus Jones so take and hold lot No. 3, That Sarah E Thompson wife of John B. Thompson, so take and hold lot No. 4. and that Ellen Robinson wife of James A. Robinson so take and hold lot No. 5. And that each party to this suit pay the cost thereof in proportion to their interest in the tract of land partitioned, And the clerk of this will deliver to the clerk of the county Court, for recordation, copies of the former decree in the case, said report and platt and this decree, And no further action being necessary in the cause the parties are hence dismissed and the cause stricken from the docket

Virginia: In Fairfax County to wit:

In the office of the clerk of the circuit court of said county the 24th day of December 1890 the foregoing report of Peter T. Miller and others executors of this day filed in this office and admitted to record.

Teste John R. Dickinson Clerk.

Peter T. Miller

vs. } Decree No 2 Final

William Miller & others

Entered C. & B.

Page 221

J. W. Royall C.

Enter this

Sept 2 1890

H. L. K. M.

Peter T. Miller Peff
vs. } In Eqy
William Miller et al Defts

This cause came on this day to be heard on the Bill of the plaintiff taken for confessed by the adult defendants. and the answer of Orey Harris and Emma Jones infants by John M Morgan their guardian ad litem and the order of publication duly entered posted & published And was argued by counsel. On consideration whereof it appears to the court that the plaintiff is entitled to have the tract of land in the bill mentioned partitioned pursuant to the prayer thereof, to attain that end It is adjudged ordered and decreed that L. M. Baumgardner Harrison E Edds and A. J. Myers be appointed Commissioners to make such partition who in doing so will take in to consideration, quantity, quality, convenience and inconveniences, and other proper matters and on this basis they will divide said tract of land into 7 equal lots or parcels, two of which they will assign the Peff Peter T. Miller. they will assign one such share to William Miller, a like share to Ellen Robinson wife of James A. Robinson, a like share to Sarah E. Thompson wife of John B. Thompson, a like share, and three fifths of the seventh part thereof to B F. Kincaid and the remaining 2/5 of the seventh they will assign to Orey Harris and Emma Jones wife of Finas Jones And if said commrs can do so without prejudice to the rights of others, they may assign the two shares of the plaintiff in a body together to him and so of the interest of the said Kincaid and they may assign the interest of Orey Harris & Emma Jones adjoining the And said Comrs will report their action to the court and the cause is continued

Interest of said B F Kincaid

Peter T. Miller

vs. } Decree No. 1

Wm Miller & others

Entered Chcy O B
page 248
April 1st 1890
J A C Stryker

Entered this
April 1 1890
W.A.K.M.

Virginia

At a circuit Court Continued and held for Lee County at &c April 1st 1890.

Peter T. Miller Pltff
vs } In Chancery
Wm. Miller et al Deftts

This cause come on this day &c &c
On consideration whereof it appears to the court, that the Pltff, is entitled to have the tract of land in the bill mentioned partitioned pursuant to the prayer thereof and to attain that End; It is adjudged ordered and decreed, that L. M. Carnical, Harrison E. Edds and A. J. Myres, be appointed Commissioners to make such partition, who in doing so will take into consideration quality quantity conveniences and inconveniences and other proper matters, and on this basis, they will divide said tract of land into seven equal parts, lots or parcels, two of which they will assign the Plantiff Peter T. Miller, they will assign one such share to William Miller, a like share to Ellen Robinson, wife of James A. Robinson, a like share to Sarah E. Thompson wife of John B. Thompson, a like

Peter M. 2
Wm M. 1
Ellen R. 1
Sarah J. 1
B. F. K. 1 2/5 of 1/7
Harris & Jones 2/5 of 1/7
7.

Share and three fifths of one seventh part thereof to B. F. Kincaid, and the remaining two fifths of one seventh they will assign Orey Harris and Emma Jones wife of Hiram Jones.

And if said Commissioners can do so, without prejudice to the rights of others, they may assign the two Shares of the Plaintiff in a body together to him, and so of the interest of B. F. Kincaid and may assign the interest of Orey Harris & Emma Jones adjoining the interest of said B. F. Kincaid and said Comrs, will report their action to the Court and the Cause is Continued.

3 Copies

A Copy
Teste J. A. G. Hyatt C

Peter J. Wrien
vs. } 3 Copy of Decree
Miriam Wrien
Executed
C. J. Kincaid
D. S.

Fee for Copies
$1.45

Peter T. Miller — Pltff

vs. } In Chy.

Wm Miller & al — Defts

I do swear that Wm Miller, John B. Thompson, Sarah E. Thompson, John Ewing, A. S. Whitehead, Ellen Whitehead, William McBarnes, Orey Harris, Fineas Jones and Emma Jones defts in said suit are non residents of Va. as I am informed and believe so help me god.

Henry J. Morgan

Sworn to before me Feby 12. 1840

J. A. S. Hyatt c

Peter T. Miller

vs. } affd.

Wm Miller et al.

Filed Feby 12/1890
J. A. L. Hyatt C.

1 (Partition D. Miller Land)

Peter T Miller Pleff
vs
Wm Miller et al Deft } In Chancery

Pursuant to an order of the Circuit Court of Lee Co Va dated 1st of April 1890 We the undersigned Commissioners appointed in said order to partition the lands mentioned in the bill filed in the above Cause have performed said requirement according to the following Plat & report We surveyed the entire tract & found it to Contain 577½ Acres –
With due regard to quantity, quality Convenience &c We have laid off and assigned to Peter T Miller Lot No 1 which we regard equal in value to 2/7 of the whole tract & bounded as follows –
Beginning at 6 small Hickories on top of Stone Mountain (A) Corner to Mrs Amy Baileys land & with a line of the same S 16 E 274 poles to a stake & blackoak on the south line of the Hubbard land & with the same & along the side of the Poor Valley ridge S 56½ W

91 poles to (C) a Maple, 3 dogwoods, Chestnut & Chestnut-oak - Thence leaving the Hubbard line N 16 W 296 poles to (D) a stake on top of Stone Mountain & with the top of same N 72 E 88 poles to the beginning Containing 158 1/3 Acres Fig A.B.C.D.

We have laid off and assigned to Wm Miller Lot No 2 which we regard equal in value to 1/7th of the whole tract & bounded as follows

Beginning at (C) a maple 3 dogwoods a chestnut & Chestnut-oak on the south line of the Hubbard land Corner to Lot No 1 & with said line S 56 1/2 W 33 poles to the top of Poor Valley ridge & along top of same S 86 1/4 W 9 poles to (G) S 77 1/2 W 3 poles to (F) a maple, sourwood, locust and Chestnut on top Thence leaving top of ridge N 16 W 304 poles to a stake (E) on top of Stone Mountain & with the top of same N 72 E 43 1/2 poles to (D) corner to Lot No 1 & with line of same S 16 E 296 to the beginning Containing 79 1/6 Acres

We have laid off & assigned to B.F. Kincaid Grey Harris & Emma

Jones Lot No 3 which we consider equal in value to 2/12 of the whole tract. In making this assignment we assign 8/10 of said Lot to B.F. Kincaid & the remaining 2/10 to Orvey Harris & Emma Jones, the said B.F. Kincaid agreeing in case he fails to purchase the remaining 2/10 of Orvey Harris & Emma Jones to make partition of said Lot at his own expense - Said Lot No 3 is bounded as follows: Beginning at (F) a sourwood, Maple, locust & chestnut on top of Poor Valley ridge, Corner to Lot No 2 thence with top of said ridge S 77½ W 15 68/100 poles S 79½ W 20½ poles S 67¾ W 18½ poles N 87 W 17 poles S 83¼ W 2 poles to (J) three chestnut-oaks thence leaving the top of said ridge N 16 W 290 poles to a (I) stake on top of Stone mountain & with the top of same N 72 E 87 poles to E Corner to Lot No 2 & with line of same S 16 E 304 poles to F the beginning Containing 158⅓ A.

(No 3)

We have laid off & assigned to Sarah E Thompson Lot No 4 which we regard equal in value to 1/12 of the whole tract & bounded as

follows beginning at (J) 3 chestnut-oaks on top of Poor Valley ridge corner to Lot No 3 thence with top of said ridge S 88¼ W 17 60/100 poles S 87¼ W 44 poles to (K) 3 chestnut oaks thence leaving top of said ridge N 16 W 280 poles to (M) a stake on top of Stone Mountain and with the top of same N 72 E 46 poles to I corner to Lot No 3 & with line of same S 16 E 290 to (J) the beginning

Containing 79½ Acres

We have laid off and assigned to Ellen Robinson Lot No 5 which we think equal in value to ½ the entire tract and bounded as follows to wit Beginning at (K) 3 Chest-oaks on top of Poor Valley Ridge thence with the top of said ridge S 87¼ W 27 poles to two chest-nut-oaks thence leaving top of said ridge N 3¼ W 52 poles to 2 small beeches (now gone) on a spur of the Poor Valley ridge about 18 poles from the foot of said ridge thence continuing with original line N 6½ E 20 poles to a poplar stump (original Corner) N 23¾ W 85, 20 poles to two Chestnuts (on the West side of a Branch) a corner to the Frederick McDonald land

and with lines of said McDon
ald land S 66 W 98 poles to a
blackgum, spotted-oak & 2 hickories
by a hollow N 20½ W 132 poles to a
stake by a rock in the Harris
Gap on top of Stone Mountain
thence with the top of said Moun-
tain N 72 E 125 poles to (M) Corner
Lot No 4 & with the west line
of said lot S 16 E 280 poles to the
beginning Containing 102½ Acres
This the 11th day of August 1890
Respct submitted

L. M. Carmical
Harrison E Edels } Com.
A. J. Myers

Bill of Cost

L. M. Carmical	surveying & platting		$22.00
H. E. Edels	Com.	2 day	4.00
A. J. Myers	"	2 day	4.00
J. W. Smith	Chain Carrier	3¼ days	3.25
P. T. Miller	" "	4 "	4.00
W. A. Miller	"	2 "	2.00
B. F. Kincaid	" "	3	3.00
Board for parties			6.50
Horse Feed			1.80
	Total		50.55

Peter T. Miller

vs. } Bond. Report of Partition

William Miller et al

Filed Augt 16 1890.

J. A. L. Wyatt C

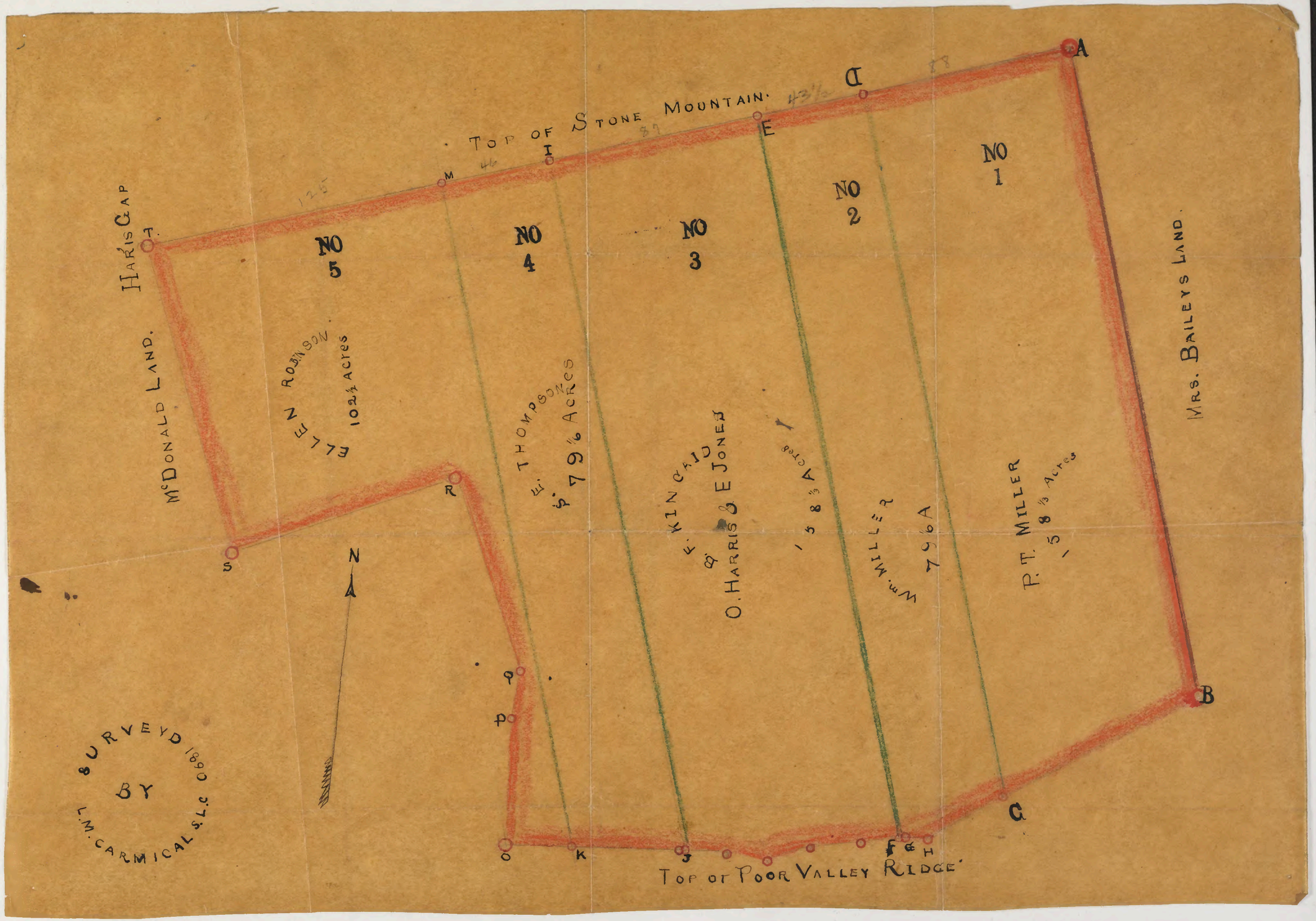
Recorded Deed

Book 25 Page 590 &c

C. R. Gibson Clk

Sept. 24, 1890

Costs $50.55


Top of Stone Mountain.
A
B
C
D
E
I
M
T
Harris Gap
McDonald Land.
Mrs. Bailey's Land.
NO 1
NO 2
NO 3
NO 4
NO 5
Ellen Robinson
102½ Acres
S. E. Thompson
79½ Acres
F. Kincaid
O. Harris & E. Jones
58⅓ Acres
Wm. Miller
79½A
P. T. Miller
58⅓ Acres
R
S
N
Q
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K
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F
G
H
Top of Poor Valley Ridge.
Surveyd 1890
By
L. M. Carmical S.L.C.

In the Clerk's Office of the Circuit Court of the County of Lee on the 12th day of February 1890.

Peter S. Miller Plaintiff

against

William Miller & others Defendants

In Chancery

The object of this suit is to Partition the Land in the Bill & proceedings mentioned

And an affidavit having been made and filed that the defendants Wm. Miller, John B. Thompson, Sarah E. Thompson, Orey Starks, Emma Jones & Finegas Jones are non residents of the State of Virginia, it is ordered that they do appear here, within fifteen days after due publication hereof, and do what may be necessary to protect their interest in this suit. And it is further ordered that a copy hereof be published once a week for four week's in some newspaper, and that a copy be forthwith posted at the front door of the court-house of this county.

A copy—Teste:

N. J. Morgan p. q. J. A. Hyatt Clerk.

Peter T. Miller
vs
Order Pub
Wm T. Miller et al

I certify that I delivered an office copy of this order to the Republican for publication and posted a like copy on the front door of Lee County Court House 1st day March Term Lee County Court this March 10. 1890

J. A. L. Doyal

The Commonwealth of Virginia.

To The Sheriff Of Lee County Greeting:

We Command You to Summon William Miller
James A. Robinson, Ellen Robinson
John B. Thompson, Sarah E. Thompson
B. F. Shincaid, Orey Harris
and Cumnia Jones & Simeas Jones

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday in March next, being rule day to answer a bill in Chancery exhibited in our said Court against them by Peter T. Miller

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse.
This 13th day of February 1890, in the 114 year of the Commonwealth.

J. A. G. Hyatt *Clerk.*

A Copy Teste

H. J. M

Peter T. Miller

vs } Spa in chcy

Wm. Miller & others

To 1st March Rules 1890

We accept legal service of this Spa. Feby. 19th 1890

J. A. Robinson
Ellen C. Robinson.

18
43
54
18
234

The Commonwealth of Virginia.

To The Sheriff Of Lee County Greeting:

We Command You to Summon William Miller, James A. Robinson, Ellen Robinson, John B. Thompson, Sarah E. Thompson, B. F. Kincaid, Ocy Harris and Emma Jones & Thomas Jones

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday in March next, being rule day to answer a bill in Chancery exhibited in our said Court against Them by Peter T. Miller

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse.
This 18th day of February 18 70, in the 11th year of the Commonwealth.

J. A. G. Hyatt Clerk.

A Copy Teste

H. J. M.

Peter T. Miller

vs

Spa in Chey

Jno Miller et al

To 1st March Rules 1890

Executed by delivering to B. F. Kincaid an office copy of the within Summons Feb 28 The 1890

C. H. Kincaid D.S.

for A. B. Mwanny

S.F.C.

VIRGINIA:—In the Clerk's Office of the Circuit Court of the County of Lee on the 12th day of Feb. 1890.

Peter T. Miller, Plff
vs. } In Chan'y.
Wm. Miller & others Defts

The object of this suit is to partition the land in the bill and proceedings mentioned.

And an affidavit having been made and filed that the defendants, Wm. Miller John B. Thompson, Sarah E. Thompson, Orey Harris; Emma Jones and Fineas Jones are non-resid'ts of the State of Va., it is ordered that they do appear here, within fifteen days after due publication hereof, and do what may be necessary to protect their interest in this suit. And it is further ordered that a copy hereof be published once a week for four week's in some newspaper, and that a a copy be forthwith posted at the front door of the court house of this county.

A copy—Teste:

J. A. G. HYATT, Clerk.

H. J. MORGAN, p. q. 2-29-4t

I, Geo. W. Blankenship, Editor of the LEE COUNTY REPUBLICAN, a weekly newspaper, published in the town of Jonesville, and county of Lee, do certify that the foregoing Order of Publication was duly published in the above named paper for four successive weeks ending March 8th 1890.

G. W. Blankenship,
Editor *Lee County Republican.*

Peter T. Miller
vs
Wm Miller et al

Sub certif.

Filed March 10th 1890.
D. A. Hyatt C

Fees $5